Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Kelley	Analyst:	Roger Lackey	Bill Number:	SB 284
Related Bills:	AB 61	Telephone:	845-3627	Introduced Date:	02-02-99
		Attorney:	Doug Bramhall	Sponsor:	Secretary of State

SUBJECT: Secretary of State

SUMMARY

This bill would provide that upon a corporate merger, the surviving domestic corporation would assume the liability of the disappearing corporation and file the required tax and information returns. In addition, this bill would require under certain circumstances that the Secretary of State (SOS) file the merger without a certificate of satisfaction from the Franchise Tax Board (FTB).

Also, **this bill** would provide that a registered foreign limited liability partnership that ceases to be such an entity must file a tax clearance certificate received from the FTB with the notice filed with the SOS that it is no longer a limited liability partnership.

This bill would make several miscellaneous amendments to various California Codes that would not impact the department. These amendments will not be addressed in this analysis.

EFFECTIVE DATE

This bill would become effective January 1, 2000.

SPECIFIC FINDINGS

Existing state law in the Revenue and Taxation Code provides that prior to its dissolution, cancellation, or withdrawal, a corporation, a limited liability partnership (LLP), or a limited liability company (LLC), must first obtain a tax clearance certificate from the FTB certifying that the taxes due, if any, for the dissolving, canceling, or withdrawing entity have been paid, assumed or guaranteed by bond or otherwise.

Existing state law provides that a corporation or LLC that fails to file annually with the SOS a statement of changes to its articles of organization would be suspended, but may be relieved of that suspension unless the corporation is being held in suspension by the FTB for other specific reasons.

This bill would provide that upon a corporate merger, the surviving domestic corporation would assume and pay the liability of the disappearing corporation and file the required tax and information returns. In addition, this bill would require, under certain circumstances, that the SOS file the merger without a certificate of satisfaction from the FTB; however, the SOS would notify the FTB of the merger.

Board Position:			Department Director	Date
______ S	______ NA	______ NP		
______ SA	______ O	______ NAR		
______ N	______ OUA	x PENDING	**Gerald Goldberg**	**4/8/1999**

This bill would add to the Corporations Code the Revenue and Taxation Code requirement that a registered LLP or a foreign LLP that ceases to be such an entity file a tax clearance certificate (as provided by the FTB) with the notice to the SOS that it is no longer a limited liability partnership.

This bill would require that a statement of changes of articles of organization by a corporation or LLC be filed with the SOS only biennially, rather than annually.

This bill would codify an uncodified provision of the Beverly-Killea Limited Liability Company Act that provides that the law should not be construed to permit a LLC to render professional services.

Implementation Considerations

Current law provides that upon winding up, a majority of the directors of the corporation are to sign a certificate of dissolution verifying certain events have taken place. This bill would add to those events "the tax liability **will be** satisfied on a taxes paid basis." Such a statement may allow a corporation to receive a tax clearance certificate from the Franchise Tax Board and thus dissolve without resolving its tax liability. Therefore, Amendment 1 could eliminate such a possibility.

Currently, the Revenue and Taxation Code requires that a registered LLP obtain a tax clearance certificate from the FTB prior to the SOS' filing of a certificate of dissolution, cancellation, or withdrawal or any other document by which the term of existence of a registered LLP is reduced or terminated. A foreign LLP must obtain a tax clearance before the SOS is authorized to file an amended registration or a notice of withdrawal or dissolution and winding up. For Corporations Code purposes, an unregistered LLP is not recognized as an LLP. By providing such treatment in the Corporations Code, this bill would duplicate provisions of the Revenue and Taxation Code and clarify the SOS' duties regarding the filing of a certificate of dissolution, cancellation, or withdrawal upon the issuance of a tax clearance certificate by the FTB.

Implementing this bill would not significantly impact the department's programs and operations.

Technical Considerations

This bill makes references to provisions of the Revenue and Taxation code that are no longer operative. Amendments 2 and 3 provide correct references.

FISCAL IMPACT

Departmental Costs

This bill would not significantly impact the department's costs.

Tax Revenue Estimate

This bill would not significantly impact the state's income tax revenue.

BOARD POSITION

Pending.

Analyst Roger Lackey
Telephone # 845-3627
Attorney Doug Bramhall

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 284
As Introduced February 2, 1999

AMENDMENT 1

On page 27, line 25, strike out "will be" and insert:

has been

Amendment 2

On page 38, line 20, strike out "23098" and insert:

17948.1

Amendment 3

On page 43, line 21, strike out "23098" and insert:

17948.1